

Employment and Training Administration, Labor

§ 655.215

employer other than as set forth in paragraph (a) of this section.

§ 655.211 Petition for higher meal charges.

(a) Until a new amount is set pursuant to this paragraph (a), the OFLC Administrator may permit an employer to charge workers up to \$6.17 for providing them with three meals per day, if the employer justifies the charge and submits to the OFLC Administrator the documentary evidence required by paragraph (b) of this section. A denial in whole or in part shall be reviewable as provided in § 655.212 of this part. Each year the maximum charge allowed by this paragraph (a) will be changed by the 12-month percent change for the Consumer Price Index for All Urban Consumers for Food between December of the year just concluded and December of the year prior to that. The annual adjustments shall be effective on their publication by the OFLC Administrator in the FEDERAL REGISTER.

(b) Evidence submitted shall include the cost of goods and services directly related to the preparation and serving of meals, the number of workers fed, the number of meals served and the number of days meals were provided. The cost of the following items may be included: Food; kitchen supplies other than food, such as lunch bags and soap; labor costs which have a direct relation to food service operations, such as wages of cooks and restaurant supervisors; fuel, water, electricity, and other utilities used for the food service operations; other costs directly related to the food service operation. Charges for transportation, depreciation, overhead, and similar charges may not be included. Receipts and other cost records for a representative pay period shall be available for inspection by the Secretary's representatives for a period of one year.

(Approved by the Office of Management and Budget under control number 1205-0015)

[43 FR 10313, Mar. 10, 1978, as amended at 49 FR 18295, Apr. 30, 1984; 51 FR 30351, Aug. 26, 1986]

§ 655.212 Administrative-judicial reviews.

(a) Whenever an employer has requested an administrative-judicial review of a denial of an application or a petition in accordance with §§ 655.204(d), 655.205(d), 655.206(c), or 655.211, the Chief Administrative Law Judge shall immediately assign an Administrative Law Judge to review the record for legal sufficiency, and the OFLC Administrator shall send a certified copy of the case file to the Chief Administrative Law Judge by means normally assuring next day delivery. The Administrative Law Judge shall not have authority to remand the case and shall not receive additional evidence. Any countervailing evidence advanced after decision by the OFLC Administrator shall be subject to provisions of 8 CFR 214.2(h)(3)(i).

(b) The Administrative Law Judge, within five working days after receipt of the case file shall, on the basis of the written record and due consideration of any written memorandums of law submitted, either affirm, reverse or modify the OFLC Administrator's denial by written decision. The decision of the Administrative Law Judge shall specify the reasons for the action taken and shall be immediately provided to the employer, OFLC Administrator, and DHS by means normally assuring next-day delivery. The Administrative Law Judge's decision shall be the final decision of the Department of Labor and no further review shall be given to the temporary labor certification determination by any Department of Labor official.

[59 FR 41876, Aug. 15, 1994, as amended at 71 FR 35520, 35521, June 21, 2006]

§ 655.215 Territory of Guam.

Subpart C of this part does not apply to temporary employment in the Territory of Guam, and the Department of Labor does not certify to the United States Citizenship and Immigration Services of the Department of Homeland Security (DHS) the temporary employment of nonimmigrant aliens under H-2B visas in the Territory of Guam. Pursuant to DHS regulations,